

**LAMCO J. V. OPERATING COMPANY**, Appellant, v. **EMMANUEL KOJO**  
and **THE BOARD OF GENERAL APPEALS**, Ministry of Labour.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL  
CIRCUIT, MONTSERRADO COUNTY.

Heard June 20, 1988. Decided July 29, 1988.

1. The law issues in a case must be determined before trial of the facts.

Co-appellee Emmanuel Kojo who had been employed with the appellant for twenty-two years became ill and was declared by the hospital to be unfit for work. Based on the diagnosis of the hospital, appellant terminated the services of Co-appellee Kojo. This action precipitated the institution of an action of unfair labor practice in the Ministry of labour and the finding of an award of \$53,370.08 against the appellant. From this decision, an appeal was take to the Board of General Appeals and to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for judicial review. However, while the appeal was pending before the Civil Law Court, the parties reached a compromise under the terms of which the appellant paid to Coappellee Kojo an amount of \$42,029.16, in return for which the co-appellee issued a release in favor of the appellant.

Notwithstanding the release, the co-appellee brought another action against the appellant, claiming the same to be for medical benefits. The Board of General Appeals, after hearing the petition for medical benefit, awarded Co-appellee Kojo an amount of \$23,344.20. From this decision, an appeal was taken to the Civil Law Court for judicial review. Upon review, the court affirmed the decision of the Board of General Appeals. The ruling of the court was appealed to the Supreme Court for final determination.

The supreme Court reversed the trial court's ruling on procedural grounds, holding that the lower court was in error in failing to pass upon the issues of law raised in the petition before proceeding to pass upon the merits of the case. The Supreme Court noted that the laws of this jurisdiction require that the issues of law raised in a case be disposed of before the issues of fact. A failure to follow this mandatory requirement of the law renders the matter reversible. The Court therefore ordered the case reheard by the trial court, beginning with the disposition of the issues of law.

Toye C. Barnard appeared for appellant. E. Wade Appleton appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

Lamco J. V. Operating Company, appellant herein, appealed from the ruling of the Board of General Appeals, Ministry of Labour, ordering appellant to pay to Co-appellee Emmanuel Kojo the sum of \$23,344.20, representing sixty percent of appellee's monthly earnings from March 1983 to May 1985. On appeal to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, on a petition for judicial review of the ruling of the Board of General Appeals, Ministry of Labour, the Civil Law Court affirmed the ruling of the Board of General Appeals. Appellant not being satisfied with the judgment of the court, excepted to same and announced an appeal to this Court on an eleven-count bill of exceptions for our review and final determination of the case.

According to the records certified to this Court, Co-appellee Emmanuel Kojo was employed by appellant, Lamco J. V Operating Company, in the carpentry department on March 1, 1985. After working with the appellant company for a period of more than twenty-two (22) consecutive years, Co- appellee Kojo took sick in 1982 and was taken to the hospital where he was examined and treated and thereafter given twenty (20) days sick leave-in-quarter. Thereafter, the hospital declared him unfit to work due to a chronic back ache which led to the termination of his services on medical grounds.

Subsequently, Emmanuel Kojo filed a complaint with the: labour commissioner of Grand Bassa County against the appellant, charging the said appellant with unfair labour practice. The commissioner having heard the complaint, ruled that the appellant pay the complainant \$53,370.08 together with transportation allowance and all other insurance benefits, to be calculated and paid in addition to the amount awarded. The labour commissioner also ruled that the complainant be placed on the SKADIA SICK PENSION until he reaches the age of sixty-seven (67) years. To this ruling, appellant excepted and announced an appeal to the Board of General Appeals. The records further reveal that during the pendency of the appeal, the co-appellee and appellant decided to compromise the case whereby Co-appellee Emmanuel Kojo accepted the sum of \$46,029.16 on the 14t day of July, 1986, as final compensation and thereafter issued an official release in favor of appellant. For the benefit of this opinion, we hereunder quote verbatim the release executed by Co-appellee Emmanuel Kojo

REPUBLIC OF LIBERIA .

MONTSERRADO COUNTY,

"RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS

That the Undersigned, being of lawful age, for the sole consideration of forty six thousand two hundred nine dollar and sixteen cents (\$46,029.16) to the undersigned in hand paid, the receipt whereof is hereby acknowledged, do/does hereby and for my/our/its heirs, executors, administrators, successors, and assigns, release, acquit and forever discharge Lamco J. V. Operating Company, its principals, associates, companies, their officers and employees, agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, insurers, associations or partnerships, in any way affiliated, associated, or in any manner connected with Lamco J. V. Operating Company, of and from any and all claims, demands; actions, causes of action, rights and damages arising out of his employment and termination by LAMCO and prosecution by the government.

"The Undersigned further declares and represents that no promises; inducement or agreement not hereby expressed has been made to the undersigned, and that this release contains the entire agreement between the parties hereto, and that the terms of this release are contractual and not a mere recital.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT."

Signed, sealed and delivered this 4th day of July, A. D. 1984.

WITNESS:

/s/ Kojo Emmanuel

Check No. 001039 in the amount of \$46,029.16."

Notwithstanding the execution of the above quoted release by Co-appellee Kojo in favour of the appellant, the co-appellee, on May 13, 1985, filed a petition with the Board of General Appeals, demanding retroactive medical benefits under the Skandia Insurance Scheme. The records show that the Skandia Scheme was one in which the employees of Lamco J. V. Operating Company were covered by virtue of their employment with Lamco. The Board of General Appeals, after hearing the petition, ruled that Appellant Lamco J. V. Operating Company should pay to appellee an additional amount of \$23,344.20, which amount, it said, represented sixty per cent of the monthly earning of Co-appellee Kojo from March, 1983 to May 1985. Appellant excepted to the ruling and announced an appeal to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Thereafter, it filed a petition for judicial review of the ruling of the Board of General Appeals. The co-appellee filed an answer and

the appellant filed a reply.

On February 3, 1986, the trial judge, His Honour Hall W. Badio, then presiding over the Civil Law Court by assignment, made his final ruling confirming and affirming the decision of the Board of General Appeals.

Appellant not being satisfied with the ruling of Judge Badio on the petition for judicial review, filed its bill of exceptions containing eleven counts. The appellant having taken all jurisdictional steps relative to the perfection of his appeal, the cause is now before us for our consideration and final determination.

Counts one to five of the bill of exceptions relate to appellant's counsel's letter for postponement of the trial, the failure of appellee's counsel to argue his side of his case prior to the judge's ruling, the appointment of counsel to take the counsel's ruling, the service of the notice of assignment on Attorney Benedict F. Sannoh, a part-time employee of Counsellor Toyé C. Barnard, and the failure of the court to rule on appellant's motion to rescind its ruling. We do not consider those counts to be relevant to the determination of the issues presented in this case. Because we deem counts six to eleven pertinent for the purpose of this Opinion, we hereunder quote same verbatim:

"COUNT 6. PETITIONER/APPELLANT also says that Your Honour committed reversible error when Your Honour ignored and refused to pass upon the issue of law set out in count three of petitioner/appellant's petition, that Co-respondent/co-appellee Emmanuel Kojo is forever barred and estopped from further claiming against petitioner/appellant in connection with the same claim, in that Co-respondent/co-appellee Kojo has been paid and has received the sum of \$46,029.16, which said receipt was duly attested to by the senior labour standards officer, the hearing officer, the director for labor standards, and the assistant minister of labour, all of the Ministry of Labour, which receipt Co-respondent/co-appellee Emmanuel Kojo voluntarily signed together with a release acquitting and forever discharging petitioner/appellant of and from any and all claims, demands, actions, causes of action, rights and damages arising out of the termination of Co-respondent/co-appellee Emmanuel Kojo's employment by the petitioner/appellant. (See count three of petitioner/ appellant's petition filed on July 19, 1985.)"

"COUNT 7. PETITIONER/APPELLANT also says that Your Honour committed reversible error when you ignored and refused to pass upon the issue of law set out in count four of petitioner/appellant's petition that petitioner/ appellant is a duly

registered corporation organized and existing under the laws of the Republic of Liberia, and under concession agreement with the Government of Liberia to engage principally in the mining and production of iron ore, and that it is not an insurer and not in the business of insurance, and therefore cannot be responsible to pay insurance benefits to Co-respondent/co-appellee Emmanuel Kojo; and further, that this issue was strenuously argued before the Board of General Appeals, but the Board. in its ruling did not fully address itself to the issue. (See count 4 of petitioner's/appellant' s petition and the records of court.)

"COUNT 8. Petitioner/appellant also says that Your Honour committed reversible error when Your Honour failed to pass upon the merits in count five of petitioner/appellant's petition that it had no obligation to pay insurance benefits from its budget to the Co-respondent/Coappellee Emmanuel Kojo, it not being engaged in the business of an insurance company and that therefore there is no basis upon which the Board of General Appeals had ordered the petitioner/appellant to pay said benefits. (See count five of petitioner/appellant's petition and the records of this court)."

"COUNT 9. Petitioner/appellant also says that Your Honour committed reversible error when you ignored and refused to pass upon the issue of law set out in count six of petitioner/appellant's petition that the ruling of the hearing officer in the regional office of the labour commissioner in Grand Bassa County is speculative, in that it ordered petitioner/appellant to pay insurance benefits to Corespondent/co-appellee Emmanuel Kojo but did not specify how much the insurance benefits were and on what basis it should be calculated, and that therefore the ruling of the Board of General Appeals affirming said ruling of the hearing officer is also speculative and without any legal or factual basis. (See count six of petitioner/appellant's petition of the records of this court.)"

"COUNT 10. Petitioner/appellant also says that Your Honour committed reversible error when you ignored and refused to pass upon the issues of law raised in count seven of the petition with respect to variance between the ruling of the hearing officer and that of the Board of General Appeals, following to wit: "And also because the ruling of the Board of General Appeals says that it affirms the ruling of the hearing officer fully or in its entirety. But petitioner says that the ruling of the Board of General Appeals is quite at variance with that of the hearing officer, in that the ruling of the hearing officer provided for payment of severance pay on medical grounds and all other benefits up to February 28, 1983, the date of respondent's termination, as can be more fully seen from the ruling of the hearing officer, marked Exhibit "C", to form part of this petition. However, the Board of General Appeals,

contrary to the ruling of the hearing officer, has ruled petitioner to pay respondent 60% of his monthly earnings from March ,1983 up to May 1985 when in fact respondent was no longer in the employ of the petitioner company; within this period. Because of this factual inconsistency, petitioner prays for the reversal of the ruling of the Board."

"COUNT 11. Petitioner/appellant says that in reply to co-respondent/co-appellant's return to the petition, petitioner/appellant filed a fourteen-count reply, in which petitioner/appellant traversed all of the issue raised in said returns. Petitioner/appellant says that Your Honour committed a reversible error when you ignored, failed and refused to pass upon the issue of law set out in said counts 1 through 14 prior to rendering judgment as required by law. (See petitioner's reply, filed August 20, 1985, of the record of this Honourable Court.

WHEREFORE, and in view of the foregoing, petitioner/appellant most respectfully tenders this bill of exceptions for Your Honour's approval to enable it to effect its appeal before the Honourable Supreme Court of Liberia, sitting in its March Term, A. D. 1986."

We observe from the above quoted (counts six to eleven) of appellant's bill of exceptions that the basic contention of appellant, as contained and set forth therein, is that the trial judge failed and refused to pass upon several issues of law raised in appellant's petition for judicial review filed with the Civil Law Court, Sixth Judicial Circuit, Montserrado County, which contention constitutes the basis for appellant excepting to the court's final judgment and appealing to this Court for our review of the proceedings had in the court below. For the benefit of this opinion, we hereunder quote count three to seven of the petition for judicial review filed with the Civil Law Court, Sixth Judicial Circuit, Montserrado County:

#### "PETITION FOR JUDICIAL REVIEW

COUNT 3. And also because petitioner says that respondent has been paid and has received the sum of \$46,029.16, which said receipt was duly attested to by the senior labour standards officer, the hearing officer, the director of labour standards, and the assistant minister for labour standards, all of the Ministry of Labour, which receipt respondent voluntarily signed together with a release acquitting and forever discharging petitioner of any and all claims, demands, actions, causes of action, rights and damages arising out of the termination of Co-respondent Emmanuel Kojo's employment by the petitioner. Petitioner hereby attaches as exhibits "A" and "B" respectively, the receipt for the amount of \$46, 029.16 and the release, all duly signed by

Co-respondent Emmanuel Kojo.

COUNT 4. And also because petitioner says that it is a duly registered corporation organized and existing under the law of the Republic of Liberia, and under a concession agreement with the Government of Liberia engage principally in the mining and production of iron ore. Petitioner says that it is not an insurer and it is not in the business of insurance, and is not responsible to pay insurance benefits to respondent. This issue was strenuously argued before the Board of General Appeals, but the Board in its ruling did not fully address itself to the issue.

COUNT 5. And also because LAMCO has no obligation to pay insurance benefit from its budget to the respondent, it not being engaged in the business of an insurance company and therefore there was no basis upon which the Board had ordered the petitioner to pay said benefits.

COUNT 6. And also because the ruling of the hearing officer in the regional office of the labour commissioner in Grand Bassa County is speculative, in that it ordered petitioner to pay insurance benefits to respondent but did not specify how much the insurance benefits were, and/or on what basis it should be calculated. Therefore, the ruling of the hearing officer is also speculative and without any legal or factual basis.

COUNT 7. And also because the ruling of the Board of General Appeals says that it affirms the ruling of the hearing officer fully or in its entirety. But petitioner says that the ruling of the Board of General Appeals is quite at variance with that of the hearing officer, in that the ruling of the hearing officer provided for payment of severance pay on medical grounds and all other benefits up to February 28, 1983, the date of respondent's termination, as can be more fully seen from the ruling of the hearing officer, marked exhibit "C", to form a part of this petition. However, the Board of General Appeals, contrary to the ruling of the hearing officer, has ruled petitioner to pay respondent sixty per cent of his monthly earnings from March 1985, when in fact respondent was no longer in the employment of petitioner company within this period. Because of this factual inconsistency, petitioner prays for a reversal of the ruling of the Board."

We observe from the record that petitioner's petition for judicial review was called for hearing on January 8, 1986, same being the 14<sup>th</sup> day's jury session of the December, A. D. 1985 Term. It would seem that when this case was called, Counsellor Toyé C. Barnard who had earlier informed the Civil Law Court in his letter dated December 20, 1985, of his inability to attend the hearing of his petition

for reason that he would be travelling to the United States of America, was not in court. Consequently, when Counsellor E. Wade Appleton announced his legal representation in favour of Co-respondent Emmanuel Kojo, now Co-appellee, he under the same breath brought to the attention of the court that "although the assignment was served by the sheriff of this court and returns made to the effect that both parties were served and returned served for the counsel to be in court at 9:00 a.m., being January 8, 1986, for judicial review, it is observed that the counsel for petitioner although signed the notice of assignment, but has not appeared. The time now stands as 10:30 a.m. At this stage, counsel for respondent prayed this court to rule thereon in keeping with the ruling of the hearing officer and the Board of General Appeals, and that as defendant/petitioner's counsel has not appeared in keeping with the notice of assignment, respondent's counsel prays this court to rule in keeping with the records of the Board of General Appeals of the Ministry of Labour. And submits."

From the above submission made by counsel for respondent in the court below, co-appellee herein, there is no showing that the said counsel for co-appellee ever requested the court for permission to argue his side of the case and he did not cite any laws in support of the ruling of the hearing officer or that of the Board of General Appeals, which rulings said counsel sought to have the Civil Law Court affirmed and confirmed, and which rulings he, the said counsel for appellee, was duty bound to defend.

The lower court, in ruling on the submission, granted the same as follows:

"THE COURT: We observe that the returns on these proceedings was signed by one Benedict F. Sannoh who also acknowledged the assignment on December 17, 1985. We observe also his absence from the hearing.

The respondent's application is however granted and the court will read through the records and render ruling seven days from now. Ruling reserved. Matter suspended. And it is so ordered."

The records further show that on the r day of January, 1986, same being the 32nd day's session of the December, A. D. 1985 Term, the hearing on the petition was resumed with only counsel for the co-respondent, now co-appellee being present, while the petitioner's counsel was still not in court.



Because the bill of exceptions of the appellant is grounded mainly upon what appellant terms as reversible errors and irregularities committed by the trial judge during the disposition of the petition for judicial review, we quote word for word the text of his ruling made on the said petition which reads as follows:

"IN RE: LAMCO J. V. OPERATING COMPANY, PETITIONER, VERSUS EMMANUEL KOJO AND MINISTRY OF LABOUR, RESPONDENTS, UNFAIR LABOUR PRACTICE, CASE CALLED FOR RULING:"

"The petitioner for judicial review is represented by the Appleton Law Chambers, in person of Counsellor E. Wade Appleton."

"THE COURT: Because of the absence of Counsellor Barnard, Counsellor Berry is asked to take the ruling of court in Counsellor Barnard's behalf."

"RULING: complaint was filed in the office of the labour commissioner in Buchanan, Grand Bassa County, by Emmanuel Kojo against Lamco for unfair labour practice. The complaint was heard and ruling made on February 15, 1984. That ruling demanded severance pay on medical ground including other benefits such as insurance."

Petitioner excepted to the commissioner's ruling and appealed to the Board of General Appeals, Ministry of Labour. Arguments were heard pro et con on the issue of the commissioner's ruling awarding \$35,370.08 to Emmanuel Kojo, including transportation and insurance benefit.

Before concluding arguments or, in fact while that appeal was pending, petitioner unceremoniously withdrew its appeal and paid Respondent Kojo \$46,029,16 for period served the petitioner company and severance pay, omitting all retroactive medical benefits under the Skandia's Insurance Scheme which covers all Lamco's employees.

Respondent's argument before the Board stressed petitioner's refusal to comply fully with the ruling of the labour commissioner to the effect of excluding the Skandia's insurance benefits.

Petitioner admitted paying the \$46,029,16 but argued that the claim was against Skandia's Insurance Company and must be directed to them for payment.

Procedural exercises and limitations developed by our secured basic rights of litigants and that practice conforms to due process guarantee by our Constitution and statutory laws. In essence, when exceptions are noted at a trial against a ruling, decision or judgment and an appeal announced, then all exercises or subsequent actions by court stop. If, however, during the pendency of that appeal, the party litigant who announced that appeal decides to comply with the judgment, ruling or decision of court, then the entire machinery of that court is put back in operation and the appeal cancelled or withdrawn. In that circumstance, the trial court proceeds with the enforcement of its judgment without reservation. This exercise becomes necessary and apparent when the party who announces any appeal expresses especially his intention to withdraw same, and in fact acts accordingly. Therefore, the Board's position was essentially an enforcement of the ruling of the labour commissioner for immediate implementation.

In essence, the Board of General Appeals expressed the general administrative requirement under the employee's contract and while considering and defining those specific standards, it did adopt a direct standard, derived from the company's general insurance implementation procedure which act embraced fair trial idea. In short, the hearing officer ordered that the respondent who is not the petitioner pay transportation and all other insurance benefits to the respondent herein; also, that he, Respondent Kojo, be placed on Skandia's sick pension coverage until he attains the age of 67 years."

It seems clear to us therefore that the Board's emphasis on the petitioner's employee insurance policy provides a clear standard of justice concept which cannot be overlooked nor regarded as being arbitrary and inconsistent.

**RULING:** In view of the fact traversed by the petitioner and respondent and briefly discussed by court, it is our ruling that the Board's decision not be disturbed. That decision is therefore hereby confirmed and affirmed in its entirety. In other words, that the petitioner pay to Respondent Kojo the total amount of \$23,344.20, which amount represents the 60% (sixty percent) of monthly earnings of the respondent, that is from March 1984 to May 1985. And that Respondent Kojo continues to benefit under the Skandia's insurance policy until he attains the age of 67 years in keeping with the provision of that policy. Also, the ruling the hearing officer, confirmed by the Board of General Appeals, is confirm and affirm. Costs are ruled against the petitioner company. And it is hereby so ordered.

Given under my hand and in open court  
this 3<sup>rd</sup> day of February, A. D. 1986.

Hall W. Badio

ASSIGNED CIRCUIT JUDGE' PRESIDING

To which ruling, petitioner excepts and announces an appeal to the Honourable the Supreme Court of Liberia, in its March, A. D. 1986 Term. And submits.

THE COURT: Exception noted, appeal granted. AND IT IS SO ORDERED. MATTER SUSPENDED."

We observe from the ruling on the petition, made by the trial, judge on the petition, as well as from the records, that the trial judge did not dispose of the law issues prior to the ruling on the petition. We notice with grave amazement also that the judge mentioned in his ruling that he had disposed of the law issues. That allegation is not supported by the minutes of the trial court. The records reveal that on the 8th day of January, A. D. 1986, when the hearing of the petition was first called and respondent, now co-appellee, made a submission to the effect that the trial judge should affirm the ruling of both the hearing officer and the Board of General Appeals on the ground that counsel for petitioner, now appellant, had failed to attend the trial after being served with a notice of assignment, the trial judge granted the submission but suspended the ruling to be made after seven days. The records show further that on the 3r d day of February, A. D. 1986, when the case was called, the court without disposing of the law issues proceeded to rule on the petition, which act was contrary to law.

In the cases *Geeby and Geeby v. Witherspoon*, 12 LLR 20 (1954), this Court held that "the issues of law must be determined before trial of facts." In that case, William B. Geeby had instituted an action of divorce against his wife, in the August Term, 1950, of the aforementioned court. In utter disregard of the applicable law, the presiding judge denied the wife of her right to be represented by the counsel she had retained to represent her in the divorce case. The judge therein proceeded to hear the said divorce *ex parte* without disposing of the legal issues and without having transferred the case to the trial docket. On appeal, this Court reversed the judgment and ordered the case remanded for a new trial with instructions to the trial court to resume jurisdiction over the case, hear and dispose of the law issues raised in the pleadings, and thereafter proceed with the case in the proper manner.

In view of the circumstances narrated above, coupled with the laws cited, it is our holding that the trial in the lower court was irregular and contrary to law, practice and

procedure that ought to be observed at all times. The judgment is hereby reversed and the case ordered remanded to the trial court for re-hearing with instruction to the judge of the trial court to resume jurisdiction, hear and dispose of the issues of law raised in the pleadings, and thereafter proceed with the case according to law, with costs against appellee. And it is hereby so ordered.

*Judgment reversed.*